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#21

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Nelson
Serial No.: 09/024,988
Filed: February 17, 1998
For: Mass Spectrometric Immunoassay
Atty. Docket No.: 530-005

Art Group: 1642
Examiner: Ungar, Susan

Box RCE
Assistant Commissioner for Patents
Washington, D.C. 20231

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Dear Sir:

Responsive to the Advisory Action dated 10/31/01:

The applicant herein has petitioned for reinstatement of the above referenced patent application. The abandonment was unintentional due to the fact that the examiner on this case, and the applicant's attorney, had reached, and relied upon, a basic agreement as to the form of allowable claims (with only minor amendments for clarity required for allowance). Subsequently, the examiner maintained the rejections with insufficient time to respond properly before formal abandonment.

Accompanying the petition for reinstatement, the applicant has included an application for continued examination of the above referenced application.

However, in view of the fact that the examiner on the above reference application continually changes positions regarding allowability of claims (and applicability of a certain reference: Van Ginkel), to the applicant's detriment, and further in view of the fact that the examiner on the above referenced application (who has been the examiner for the application since it was originally filed on May 23, 1995) has only had one patent to issue during the prosecution of the above referenced application; the applicant respectfully requests a different examiner be assigned to the instant application. The examiner currently assigned in to the instant application has, on during the course of several telephonic interviews with the applicant's attorney, indicated an understanding that the Van Gingel reference was distinguished and different from the applicant's invention. Further, the examiner, telephonically, indicated that a

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basic from of allowable claim was agreed upon and only minor clarifying amendments to dependent claims would be necessary for allowability. Subsequently, the examiner reneged on the agreement and maintained outstanding rejections. This inconsistency and unreliability demonstrated by the examiner clearly indicates a prejudice against either the applicant or the applicant's invention. Since this prejudice is not allowed under patent law, it should not be allowed to stand.

The fact that the examiner currently assigned to the instant application has only issued one patent (that the applicant is aware of) clearly indicates that the examiner is intractable as to patentability of any invention and is unreasonably preventing issuance of valid patents (the instant application being one).

Therefore, in order to receive a fair examination of the applicant's invention, the applicant respectfully requests that a different, un-prejudiced, examiner be assigned to the instant application.

Finally, because of the extremely long prosecution time involved in the prosecution of the instant application, due to the current examiner's prejudice and inconsistency, the applicant is requesting a formal, in-person, examiner interview with the new examiner in order to reach an understanding on the pending claims. Accordingly, when the new examiner is assigned to this case, the applicant respectfully requests that the examiner contact the applicant's attorney in order to schedule the interview time at the United States Patent and Trademark Office.

Respectfully submitted,

Date: 3/7/02



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